

October 11, 2006

AO DRAFT COMMENT PROCEDURES

The Commission permits the submission of written public comments on draft advisory opinions when proposed by the Office of General Counsel and scheduled for a future Commission agenda.

Today, DRAFT ADVISORY OPINION 2006-27 is available for public comments under this procedure. It was requested by Cynthia Czuchaj on behalf of Prime Choice Entertainment.

Proposed Advisory Opinion 2006-27 is scheduled to be on the Commission's agenda for its public meeting of Wednesday, October 18, 2006.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00 noon (Eastern Time) on October 17, 2006.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

CONTACTS

Press inquiries: Robert Biersack (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2006-27, contact the Public Records Office at (202) 694-1120 or (800) 424-9530.

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

MAILING ADDRESSES

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Washington, DC 20463



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 11, 2006

MEMORANDUM

TO: The Commission

FROM: Lawrence H. Norton
General Counsel

Rosemary C. Smith
Associate General Counsel

J. Duane Pugh
Acting Assistant General Counsel

Anthony Buckley
Attorney

Subject: Draft AO 2006-27

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 18, 2006.

Attachment

1 ADVISORY OPINION 2006-27

2
3 Ms. Cynthia Czuchaj
4 Prime Choice Entertainment
5 1845 S. El Molino
6 San Marino, CA 91108
7

DRAFT

8 Dear Ms. Czuchaj:

9 We are responding to your advisory opinion request on behalf of Prime Choice
10 Entertainment (“Prime Choice”) concerning the application of the Federal Election
11 Campaign Act of 1971, as amended (the “Act”), and Commission regulations to Prime
12 Choice’s planned website. Prime Choice plans to offer website viewers an opportunity to
13 view commercials sponsored by certain corporations. In exchange for the viewers
14 answering questions about commercials, Prime Choice would contribute funds from these
15 corporations to political party committees as directed by the viewers.

16 The Commission concludes that Prime Choice may not carry out its plan without
17 violating the Act and Commission regulations.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letters received on
20 July 31 and August 22, 2006.

21 Prime Choice is a for-profit corporation that would operate a website located at
22 <http://www.yourtimecounts.org>. This website would operate as follows: An individual
23 accessing the website would choose a commercial to view on that website and either a
24 national political party committee or a nonprofit organization to receive a contribution or
25 donation. The individual will not be permitted to receive any payment under any
26 circumstances. After the individual views the commercial and answers a question, the
27 commercial’s corporate sponsor will forward a 25-cent payment to Prime Choice. Prime

Choice will keep ten percent of the payment as its share, and forward the remaining 90 percent to the political committee or other recipient selected by the individual.

Question Presented

May Prime Choice forward funds it receives from corporations to national political party committees?

Legal Analysis and Conclusions

No, Prime Choice may not forward any funds it receives from corporations to national political party committees.

The Act provides that, “[a] national committee of a political party (including a national congressional campaign committee of a political party) may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act.” 2 U.S.C. 441i(a)(1).

The Act specifically prohibits any corporation from making a contribution or expenditure in connection with any Federal election. *See* 2 U.S.C. 441b(a). A “contribution” includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 2 U.S.C. 431(8)(A)(i); *see also* 2 U.S.C. 441b(b)(2). “Anything of value” is considered to include all in-kind contributions, including the provision of goods or services without charge. 11 CFR 100.52(d)(1).

A “commercial vendor” is any person “providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services.” 11 CFR 116.1(c). Commission regulations permit

1 a commercial vendor to provide goods or services to political committees in the ordinary
2 course of business and at the usual and normal charge. *See* 11 CFR 114.2(f)(1).

3 A business model such as yours is permissible only under certain conditions.
4 First, to avoid prohibited corporate contributions, any funds given to a political
5 committee must be the personal funds of individuals, not corporate funds. *See* Advisory
6 Opinions 2006-8 (Brooks), 2004-19 (DollarVote), 2003-16 (Providian National Bank),
7 and 2002-7 (Careau).

8 Your proposal would not result in personal funds of individuals being used to
9 make contributions. Your website viewers would not have the option of keeping the
10 payments for viewing ads for themselves. Without that option, the funds would remain
11 the corporate sponsors' funds and would never become the personal funds of the
12 individuals. Providing these funds to national party committees would result in corporate
13 contributions in violation of 2 U.S.C. 441b.

14 Second, if a corporation such as Prime Choice were to operate as a commercial
15 vendor, it must meet three conditions to avoid an impermissible corporate contribution.
16 First, the commercial vendor must be compensated for the costs it incurs in processing
17 and forwarding contributions to the political committees. Specifically, either individual
18 contributors or the recipient political committees must reimburse the commercial vendor
19 for its costs. Second, the funds from individuals must be placed in a separate merchant
20 account and not commingled with corporate treasury funds. Third, contributors must
21 attest to the legality of their contributions and provide certain identifying information,
22 which the commercial vendor must then forward to the recipient political committees.
23 *See* Advisory Opinions 2006-8 (Brooks), 2004-19 (DollarVote), and 2002-7 (Careau).

